

Before the

FCC Mail Room

Federal Communications Commission*Washington, D.C. 20554*

In the Matter of :)	
)	
Hillcrest Baptist Church)	CGB-CC-0525
)	CSR
Video Programming Accessibility)	
)	
Closed Captioning)	

To: Deputy Chief, Policy Division, Media Bureau:

REPLY OF HILLCREST BAPTIST CHURCH OF EL PASO, TX
TO OPPOSITION TO PETITION FOR EXEMPTION

1. HILLCREST BAPTIST CHURCH of El Paso, TX ("Hillcrest"), by its counsel, herewith submits the instant REPLY to the OPPOSITION filed by the Telecommunications of the Deaf and Hard of Hearing Inc. et al. ("Consumer Groups"), in the above captioned proceeding. In support whereof, the following is stated:

2. Consumer Groups states in para. I of its Opposition, at p. 4, that Hillcrest has sufficient surplus funds (\$61,691.30) to cover the estimated annual cost for captioning (\$6,500.00). That statement fails to consider the source of the so-called surplus funds. As stated in Hillcrest's Petition, at p. 3, Hillcrest does not generate any income from the broadcasts in question. There are no surplus funds in the church's broadcast budget. There is no income whatsoever. This is provided as a service to, among others, the handicapped members of the community who are unable to make it to the church services themselves. To argue that the church's general funds should be considered in connection with its broadcast services totally misses the mark. One might as well argue that Hillcrest must consider the art treasures in the Vatican as part of its surplus because, after all, Hillcrest is part of the church universal. That

kind of argument makes no sense.

3. The only thing pertinent here is the portion of the budget that relates to broadcast operations. With no income generated from the broadcast operations, Hillcrest is actually operating in the red in its efforts to make church services available to “shut-ins,” generating a net loss of at least \$10,400.00 per year. Adding an additional \$6,500.00 per year in expenses will not serve the interests of the Consumer Groups. It will only mean that the entire handicapped community will lose this service due to the increase in expense of a service that generates no income for the church. Hillcrest will likely be required to cease broadcasting its services due to the burden of this added expense. Paragraph I of the Consumer Groups’ argument must fail in light of the cold facts pertaining to the broadcast budget of Hillcrest.

4. In para. II of its Opposition, Consumer Groups acknowledges that Hillcrest sought assistance with its closed captioning but was denied assistance by its video programming distributor. Consumer Groups nevertheless argues that “the petitioner must also demonstrate that it has **exhausted all alternative avenues for attaining assistance** with captioning its programming” and that “there is no evidence that Hillcrest has fully, much less exhausted, alternative avenues to fund captioning” (Opposition at pp. 4-5)[emphasis added]. Hillcrest respectfully submits that Consumer Groups has misinterpreted the standard set forth by the Commission; however, if the standard is that the petitioner must have exhausted all potential alternative avenues to fund captioning, then Consumer Groups’ proposed standard would be unconstitutional. While Consumer Groups does not insert the word “potential” in its Opposition, this is clearly what Consumer Groups is implying.

5. Consumer Groups are acknowledged experts in the area of advocating closed captioning. If they had known of some potential source of funding for Hillcrest, they presumably would have contacted Hillcrest, or its counsel, with that information so that their

constituency could, in fact, receive closed captioning of the Hillcrest programming. For Consumer Groups to resort to legal action when a practical solution was available would have been a gross abuse of the administrative process, wasting the resources of the Commission, Hillcrest, and the Consumer Groups themselves. They did not identify any such alternative sources of funding, and logic dictates that there are no alternative sources of funding other than the program distributor, KSCE(TV), the only such potential source of funding known to Hillcrest. Requiring Hillcrest to seek out other potential sources of funding when none are known to exist and none are likely to exist would be to require Hillcrest to perform a useless act. No law can constitutionally require a party to perform a useless act.

6. The program distributor, KSCE, has denied the request to fund captioning for the Hillcrest programming. It is also highly unlikely that any potential source of funding would fund closed captioning for a small church in any small market. KSCE receives a total of \$10,400.00 per year from Hillcrest to pay for the airtime used for this programming. If KSCE paid the cost of closed captioning for Hillcrest (\$6,500.00), that would leave only \$3,900.00 to pay for a year's worth of programming on KSCE. That amount would hardly cover operation expenses for the airtime involved. The dollar amounts involved in providing closed captioning in El Paso, TX don't make economic sense to either a program distributor or someone willing to fund closed captioning in light of the low potential audience and revenues that could be generated. In this case, the revenues are a matter of record with the Commission as set forth in Hillcrest's petition. No (0) revenues are generated from this program.

7. It defies common sense to assume that any funding entity would want to fund closed captioning for individual churches, such as Hillcrest, in a small market like El Paso. It is more likely that they would fund the equipment for the TV station so that all programming on that station could be closed captioned and not just that of a particular church. Further, unless they

had an unlimited budget (which Consumer Groups should identify if there is such an entity), the obvious target for any party wishing to fund closed captioning would be operations in large markets rather than markets the size of El Paso. Presumably, the price of providing closed captioning equipment is not going to vary substantially from one market to the other. However, the number of potential handicapped persons that can be reached in a large market is going to be far greater than the number that could be reached in a small market. One does not need a Harvard business school study to understand the basic realities of the marketplace. Donor funding of closed captioning is not available in small television markets like El Paso. Funding will be earmarked for the large markets where the funding will do the most good for the most people. Consumer Groups would have identified sources of funding for small market churches if it was available. They have not because there are no such sources available. Common sense and logic will inform any thoughtful person that, with limited funds available, potential donors will only fund closed captioning for programmers in larger markets. Hillcrest should not be required to prove a negative when it would be totally illogical to imagine that such funding is or even could be available.

8. Next, Consumer Groups argues that the captioning rules do not violate Hillcrest's First Amendment rights. Consumer Groups states the following (at pp. 5-6): "captioning requirements do not violate the First Amendment because they involve only 'a precise repetition of the spoken words' of the captioned programming and do 'not significantly interfere with program content.'" Hillcrest does not disagree with that basic statement. It is not closed captioning *per se* that is the issue, it is the "chilling effect" on free speech that stems from the financial realities of this particular case. Absent a waiver of the closed captioning rules, the cost of broadcasting the programming will be prohibitive. Hillcrest's free speech will be chilled because of the distinct possibility that it will be unable to continue to broadcast its services on

television.

9. Consumer Groups further argues, at p. 6, that Hillcrest's "free exercise" argument implies that "providing closed captioning to serve viewers of Hillcrest's community of broadcast who are deaf or hard of hearing somehow runs counter to the religious beliefs of Hillcrest or its members." That is a total distortion of the argument, and it is not a true depiction of Hillcrest's religious beliefs or its arguments in this case. If Consumer Groups, or some related party, will fund closed captioning for Hillcrest, Hillcrest will be happy to provide closed captioning to better serve the handicapped of its community. However, forcing Hillcrest to pay for closed captioning will result in the distinct possibility that Hillcrest will be forced off the air, thereby eliminating all broadcast speech by Hillcrest. This would then become a case of a government-imposed choice of how Hillcrest spends its money and that would be contrary to the free exercise of religion.

10. The choice that Hillcrest will ultimately face, if it does not receive a waiver, would require Hillcrest to eliminate \$6,500.00 from some other part of its budget. For example, Hillcrest might have to eliminate any potential program to feed the hungry to compensate for the additional funds to be spent on closed captioning. Does that mean that Consumer Groups opposes the feeding of the hungry? Of course not. Hillcrest has a limited supply of money. There are unlimited needs in the El Paso community. Choices must be made as to where to spend money. Free exercise demands that choices pertaining to how to spend church funds must be made by the church and not by the state.

11. As a final matter, Hillcrest requests a ruling on whether it is, alternatively, entitled to exemption based on Section 79.1(d)(8) of the rules by virtue of the fact that its broadcasts consist of "Locally produced and distributed non-news programming with no repeat value." The broadcasts of weekly religious services are locally produced by Hillcrest, have no repeat value,

are of local public interest, are not news programming, and the "electronic news room" technique of captioning is not available to Hillcrest. Likewise, Hillcrest may be eligible for exemption under 79.1(d)(11) in that the captioning expense is in excess of 2 percent of gross revenues generated by the broadcast of this programming (petition affirmed that no income is generated by the programming) or 79.1(d)(12) in that the total revenues generated by Hillcrest are under \$3,000,000.00 (gross income being \$1,738,094.92). In the event the Commission rules that Hillcrest qualifies for any of the above exemptions, the Commission need not rule on the "economically burdensome" exemption as it would be rendered moot.

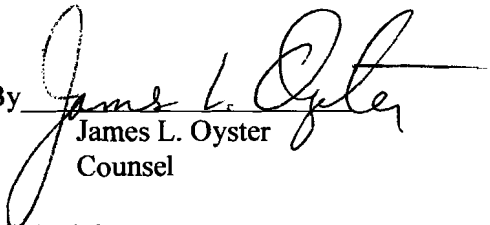
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant Hillcrest an exemption from the requirements of 47 C.F.R. 79.1 of the Commission's Rules as may be appropriate under the circumstances.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, Virginia 22716-9720

(540) 937-4800
March 29, 2012

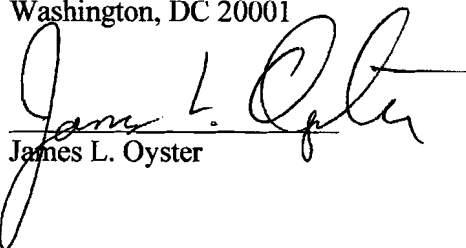
HILLCREST BAPTIST CHURCH

By 
James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing REPLY pleading by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 29th day of March, 2012, to the following:

Blake E. Reid, Esq.
Institute for Public Representation
600 New Jersey Ave., NW
Washington, DC 20001


James L. Oyster